

## REMARKS/ARGUMENTS

### 1. Amendment to the Claims

Claims 1-49 and 51 remain in this application, wherein claims 7, 8, and 14 have been withdrawn and claim 50 has been cancelled. Claims 1, 15, 21, 30, 38, and 44 have been amended to better define and more clearly recite the invention. No new matter has been added by amendment. Support for the amendments is abundant throughout the application as filed, including on page 9, lines 19-26, page 13, lines 24-27, and page 11, lines 19-25. Applicant respectfully requests reconsideration and withdrawal of all rejections.

### 2. Rejections to the Claims Under 35 U.S.C. § 112

Claims 38-43 were rejected under 35 U.S.C. § 112 as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. More particularly, the Examiner asserts that the reference to a retaining strap configured to pass through an opening proximate the throat of the racquet defines the bag in reference to the racquet, which is undefined and has not been positively claimed, thereby rendering the claim vague and indefinite. Applicant has amended claim 38 to positively recite that the retaining strap extends across the opening of the top of the racquet compartment for retaining a throat of a racquet in a desired position. No new matter has been added by this amendment. Applicant respectfully submits that the § 112 rejection has been obviated and should be withdrawn.

### 3. Rejections to the Claims Under 35 U.S.C. § 102

The Examiner has rejected claims 44, 48 and 49 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,005,679 to Hjelle (hereinafter "Hjelle"). Applicant has amended claim 44 to further define the racquet compartment.

Amended claim 44 recites, *inter alia*, "a racquet compartment positioned in spaced relation to the accessory compartment, wherein the racquet compartment includes a top, a bottom, opposing first and second sides, the racquet compartment having a generally truncated egg-shaped cross-section defined by the first and second sides, the racquet compartment configured to conform to the shape of a racquet head...."

Applicant respectfully submits that Hjelle discloses a bag 1 lacking a racquet compartment as recited in amended claim 44. It is well-known that "anticipation under 35 U.S.C.

§ 102 requires the disclosure in a single piece of prior art of each and every limitation of a claimed invention." Apple Computer, Inc. v. Articulate Systems, Inc., 57 USPQ2d 1057, 1061 (Fed. Cir. 2000), *citing* Electromed Sys. S.A. v. Cooper Life Sciences, 32 USPQ2d 1017, 1019 (Fed. Cir. 1994). Amended claim 44 overcomes the anticipation rejection based on Hjelle because this reference does not meet every recited claim limitation. For at least these reasons, it is respectfully submitted that claim 44, and the claims dependent therefrom, are in condition for allowance.

4. Rejections to the Claims Under 35 U.S.C. § 103

Claims 45-47 and 50 were rejected as unpatentable over Hjelle in view of an Official Notice and U.S. Patent No. 6,619,447 to Garcia, III et al ("Garcia"). The Examiner acknowledges that Hjelle does not disclose at least first and second walls meeting at an apex.

Rather than finding any teaching in the prior art of record, the Examiner relies on "official notice" that it is well known for providing a backpack with first and second side walls meeting at an apex. The MPEP provides guidance on "official notice" in Section 2144.03.

MPEP Section 2144.03 states:

. . .  
In limited circumstances, it is appropriate for an examiner to take official notice of facts not in the record or to rely on "common knowledge" in making a rejection, however such rejections should be judiciously applied.

. . .  
Official notice unsupported by documentary evidence should only be taken by the examiner where the facts asserted to be well-known, or to be common knowledge in the art are capable of instant and unquestionable demonstration as being well-known.

. . .  
It would not be appropriate for the examiner to take official notice of facts without citing a prior art reference where the facts asserted to be well known are not capable of instant and unquestionable demonstration as being well-known.

The Examiner argues that first and second side walls of Garcia should be considered equivalent to meeting at an apex. Applicant respectfully disagrees. The term apex is defined as "the uppermost point; the narrowed or pointed end." *Merriam-Webster Online Dictionary*, Copyright © 2006, as provided at <http://www.m-w.com/dictionary/apex>. Nothing in Garcia shows the first and second side walls of Garcia meeting at an apex.

Applicants submit that the Examiner has improperly used official notice to avoid providing documentary evidence to support his conclusion. Applicants traverse the Examiner's use of official notice in this manner. Nothing in Hjelle or Garcia discloses or suggests first and second side walls meeting at an apex.

In the alternative, claims 45-47 and 50 depend from properly allowable claim 44. As previously detailed, amended claim 44 requires a racquet compartment including a top, a bottom, opposing first and second sides, wherein the racquet compartment has a generally truncated egg-shaped cross-section defined by the first and second sides and is configured to conform to the shape of a racquet head. Also as previously stated, applicant respectfully submits that Hjelle fails to disclose a racquet compartment configured to conform to the shape of a racquet head as required by amended claim 44.

It is respectfully submitted that Official Notice and Garcia fail to overcome the deficiencies of the primary reference Hjelle with respect to amended claim 44. Applicant respectfully submits that Hjelle, the Official Notice and Garcia, individually or in any combination, fail to disclose, teach, or suggest, the limitations of amended claim 44. Since claims 45-47 and 50 depend from amended claim 44, it is respectfully submitted that claims 45-47 and 50 are in condition for allowance.

Claims 1-3, 10 and 13 were rejected as being unpatentable over U.S. Patent No. 3,963,103 to Cowen, III ("Cowen") in view of the Official Notice and in further view of U.S. Patent No. 5,529,229 to Fier ("Fier"). The Examiner acknowledges that Cowen does not disclose first and second side walls meeting at an apex. Similar to the previous rejection, the Examiner relies on "official notice" that it is well known for providing a backpack with first and second side walls meeting at an apex without providing documentary evidence in the prior art. Applicants submit that the Examiner has improperly used official notice and that claim 1, and the claims dependent therefrom, are in condition for allowance.

In the alternative, the Examiner also acknowledges that Cowen does not disclose an upper end of a strap being coupled to an upper center portion of an accessory compartment. The Examiner relies on Fier to disclose this unmet claim limitation. Amended claim 1 recites, among other things, "opposing first and second side walls connecting the front wall and the rear wall, the first and second side walls meeting at an apex." Amended claim 1 also recites "a

carrying strap having an upper end and a lower end, the upper end being coupled to the upper center portion of the rear wall proximate the longitudinal center axis and proximate the apex.”

Applicant respectfully submits that Fier does not meet the limitations recited in amended claim 1. Moreover, Fier fails to disclose, teach, or suggest a backpack including an apex, much less a carrying strap coupled to an upper center portion of a rear wall proximate an apex.

As previously stated, the Examiner has acknowledged that Cowen does not disclose the limitations of amended claim 1. For at least the foregoing reasons, applicant respectfully submits that the combination of Cowen, Official Notice, and Fier fails to disclose, teach or suggest “a carrying strap having an upper end and a lower end, the upper end being coupled to the upper center portion of the rear wall proximate the longitudinal center axis and proximate the apex” as required by amended claim 1. For at least these reasons, it is respectfully submitted that claim 1 and the claims dependent therefrom are allowable.

Claims 4-6, 9 and 11 were rejected as unpatentable over Cowen in view of Official Notice and Fier and in further view of U.S. Patent No. 6,434,032 to Romano (“Romano”). Applicant respectfully submits that the additional reference, Romano, fails to overcome the deficiencies of the primary references with respect to amended claim 1. The carrying case component for the portable power supply in Romano fails to disclose an apex as recited in amended claim 1. Furthermore, as described in more detail in Examiner’s rejection to claim 15, the Examiner acknowledges that Cowen fails to disclose a racquet compartment comprising a generally truncated egg-shaped cross-section, as clearly recited by claim 6. For the foregoing reasons, applicant respectfully submits that claims 4-6, 9 and 11 are patentable over the references individually or in any combination. For at least these additional reasons, it is respectfully submitted that claims 4-6, 9 and 11 are in condition for allowance.

Claim 12 was rejected as unpatentable over Cowen in view of Official Notice and Fier and in further view of U.S. Patent No. 6,182,878 to Racca (“Racca”). Applicant respectfully submits that Racca fails to overcome the deficiencies of the primary references with respect to amended claim 1. Nothing in Racca discloses or suggests first and second side walls meeting at an apex. Since claim 12 depends from amended claim 1, it is respectfully submitted that claim 12 is in condition for allowance.

Claim 15 was rejected as being unpatentable over Cowen in view of Garcia. The Examiner acknowledges that Cowen does not disclose a racquet panel comprising an arcuate

first side edge, an arcuate second side edge and an arcuate lower edge. The Examiner also acknowledges that Cowen does not disclose a racquet compartment comprising a generally truncated egg-shaped cross section.

Applicant has amended claim 15 to further define the invention. Amended claim 15 recites, *inter alia*, that the racquet compartment includes an opening at the upper edge between the racquet panel and the front wall, and conforms to the shape of a racquet head. Applicant respectfully submits that Garcia fails to disclose these limitations. As previously stated, nothing in Garcia addresses racquets let alone the recited structure for conforming a racquet compartment to the shape of a racquet head. Applicant respectfully submits that Cowen and Garcia, individually or in any combination, fail to disclose this limitation of amended claim 15. For at least these reasons, Applicant respectfully submits that claim 15 is in condition for allowance.

Claim 16 was rejected as unpatentable over Cowen in view of Garcia and in further view of Fier. Applicant respectfully submits that the additional reference, Fier, fails to overcome the deficiencies of the primary references with respect to amended claim 15. For at least the foregoing reasons, applicant respectfully submits that claim 16 is patentable over the references individually or in any combination. It is respectfully submitted that claim 16 is in condition for allowance.

Claims 17-20 were rejected as unpatentable over Cowen in view of Garcia and in further view of Romano. Applicant respectfully submits that the additional reference, Romano, fails to overcome the deficiencies of the primary references with respect to amended claim 15. For at least the foregoing reasons, applicant respectfully submits that claims 17-20 are patentable over the references individually or in any combination. It is respectfully submitted that claims 17-20 are in condition for allowance.

Claims 21-29 were rejected as being unpatentable over Cowen in view of Official Notice and in further view of U.S. Patent No. 5,413,199 to Clement ("Clement"). The Examiner acknowledges that Cowen fails to disclose that the first and second side walls meet at an apex. Similar to previous rejections, the Examiner relies on "official notice" that it is well known for providing a backpack with first and second side walls meeting at an apex instead of finding a teaching in the prior art of record. Applicants submit that the Examiner has improperly used

official notice to avoid providing documentary evidence of claim limitations in the prior art. Applicants traverse the Examiner's use of official notice in this manner.

The Examiner also acknowledges that Cowen fails to disclose a storage pocket received within the accessory compartment. The Examiner relies on Clement to disclose this unmet claim limitation.

Amended claim 21 further recites, *inter alia*, a "ball storage compartment configured to receive a canister of tennis balls and including a longitudinal axis angled upwardly from horizontal." Applicants respectfully submit that Clement fails to disclose this claim limitation.

For at least the foregoing reasons, applicant respectfully submits that the combination of Cowen, Official Notice, and Clement fail to disclose, teach or suggest "the ball storage compartment configured to receive a canister of tennis balls and including a longitudinal axis angled upwardly from horizontal" as required by amended claim 21. It is respectfully submitted that claim 21, and the claims dependent therefrom, are properly allowable.

Claim 30 was rejected as unpatentable over Cowen in view of Racca. Amended claim 30 recites, *inter alia*, an "accessory compartment including a first side and a second side meeting an apex." Claim 30 now also recites, "a racquet compartment coupled to at least one of the front wall and the rear wall, wherein the racquet compartment includes a top, a bottom, opposing first and second sides, the racquet compartment having a generally truncated egg-shaped cross-section defined by the first and second sides, the racquet compartment configured to conform to the shape of a racquet head...." In an earlier rejection, the Examiner acknowledges that Cowen does not disclose first and second side walls meeting at an apex. Also, as detailed above, Applicant respectfully submits that nothing in Racca discloses or suggests first and second side walls meeting at an apex. It is further respectfully submitted that neither Cowen nor Racca disclose, teach, or suggest a racquet compartment including the elements now recited in claim 30, including a generally truncated egg-shaped cross-section and configured to conform to the shape of a racquet head. For at least these reasons, it is respectfully submitted that claim 30, and the claims dependent therefrom, are in condition for allowance.

Claims 31-35 were rejected as unpatentable over Cowen in view of Racca and in further view of U.S. Patent No. 5,450,991 to Neading ("Neading"). Applicant respectfully submits that Neading fails to overcome the deficiencies of the primary references with respect to amended

claim 1. Since claims 31-35 depend from amended claim 30, it is respectfully submitted that claims 31-35 are in condition for allowance.

Claims 36 and 37 was rejected as unpatentable over Cowen in view of Racca and in further view of U.S. Patent No. 6,000,103 to Paice et al. ("Paice"). Applicant respectfully submits that Paice fails to overcome the deficiencies of the primary references with respect to amended claim 1. Since claims 36 and 37 depend from amended claim 1, it is respectfully submitted that claims 36 and 37 are in condition for allowance.

Finally, claims 38-43 were rejected as unpatentable over Cowen in view of Romano. The Examiner acknowledges that Cowen fails to disclose a retaining strap extending proximate the top of the racquet compartment intermediate the front wall and the racquet panel. The Examiner relies on Romano to disclose this claim limitation. Applicant respectfully submit that Romano fails to disclose, teach, or suggest a retaining strap extending proximate the top of the racquet compartment intermediate the front wall and the racquet panel, much less extending across the opening of the top of the racquet compartment, as required by amended claim 38.

For at least these reasons, it is respectfully submitted that claim 38, and the claims dependent therefrom, are in condition for allowance.

5. Allowable Subject Matter

Applicant gratefully acknowledges the Examiner's allowance of claim 51.

6. Conclusion

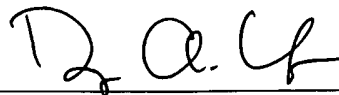
For the foregoing reasons, it is respectfully submitted that all the solicited claims are in condition for allowance. Such action is respectfully requested.

The Examiner's kind attention is directed to the Petition for Extension of time filed concurrently herewith.

If necessary, applicants request that this response be considered a request for an extension of time appropriate for the response to be timely filed. Applicants request that any required fees needed beyond those submitted with this amendment be charged to the account of Baker & Daniels, Deposit Account No. 02-0390.

The Examiner is invited to contact the undersigned at the telephone number provided below should any question or comment arise during reconsideration of this matter.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'D. A. Yerkeson', written over a horizontal line.

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